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**From:** Delehanty, Robyn  
**Sent:** Wed 8/12/2015 12:33:40 PM  
**Subject:** FW: OWM News Update, Aug. 11

Yikes, our communications person sends out articles of interest to OWM every day – the spill is dominating this one!

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**From:** Siedschlag, Gregory  
**Sent:** Tuesday, August 11, 2015 5:58 PM  
**To:** Gebhardt, Jim; Levine, MaryEllen; Loop, Travis; OW-OWM-Everyone  
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## **Gold mine's toxic plume extends to Utah**

*USA Today*

FARMINGTON, N.M. — The plume of heavy metals released last week into the Animas River from the Gold King Mine near Silverton, Colo., reached Utah on Monday.

As of Monday evening, officials said the plume of contamination was southeast of Montezuma Creek, Utah, and was headed for Lake Powell. Environmental Protection Agency officials say the pollutants in the plume include arsenic, lead, copper, aluminum and cadmium, but have not released any detailed information on the spill that started Wednesday morning and has since been contained.

Read more: <http://www.usatoday.com/story/news/nation/2015/08/10/navajo-nation-epa-mine-wastewater-spill/31399517/>

## **EPA spill: 'The magnitude of it, you can't even describe it'**

*CNN*

The city of Durango and La Plata County, Colorado, have declared a state of emergency after a federal cleanup crew accidentally released mine waste into the water.

Read more: <http://www.cnn.com/2015/08/09/us/colorado-epa-mine-river-spill/index.html>

## **Colorado health official: No river health risk**

*CNN*

From his backyard in Durango, Colorado, Tom Bartles can see the Animas River, which was stained an unnatural orange.

The Environmental Protection Agency accidentally released millions of gallons of pollutants into the water last week, turning the typically blue water to the color of mustard.

Read more: <http://www.cnn.com/2015/08/10/us/epa-river-spill-residents/index.html>

## **Pollution flowing faster than facts in EPA spill**

*CNN*

The mustard hue of the Animas River in Colorado -- the most visible effect of a mistake by the Environmental Protection Agency that dumped millions of gallons of pollutants into the water -- is striking.

Just a glance at a photo of the orange-yellowish slush is enough to know that something seems wrong. Scientists will have to say just how wrong, and possibly dangerous, the contamination is, though five days after the spill answers are few.

Just how polluted is the river? Is drinking water in peril? Are businesses dependent on the river out of luck?

Read more: <http://www.cnn.com/2015/08/10/us/colorado-epa-mine-river-spill/index.html>

## **EPA chief to view spill damage tomorrow in Colo., N.M.**

*E&E News*

Link: <http://www.eenews.net/eenewspm/2015/08/11/stories/1060023315>

Published: Tuesday, August 11, 2015

Story updated at 4:40 p.m.

U.S. EPA Administrator Gina McCarthy will visit Colorado and New Mexico tomorrow to view the areas affected by last week's Gold King Mine wastewater spill, which pumped 3 million gallons of water laced with arsenic and other heavy metals into the Animas River.

McCarthy's decision comes in the wake of pleas from area lawmakers and Colorado Sen. Cory Gardner's (R) call for oversight hearings into EPA's response to the spill.

Earlier in the day, Colorado Gov. John Hickenlooper (D) said he hoped the accident could have a "silver lining" if it prompts a more aggressive effort to clean up mining pollution in Western states.

Hickenlooper spoke during a visit to Durango, Colo., and the Animas River, which turned yellow last week when a U.S. EPA team investigating mining contamination at Gold King Mine triggered a massive spill of wastewater contaminated with arsenic and heavy metals.

During his visit, Hickenlooper -- who released up to \$500,000 in emergency funding yesterday to address the spill -- also said the river would reopen for recreation in the coming days, according to the Associated Press.

The Colorado Department of Public Health and Environment said the river's metal content is already at its pre-spill levels, The Durango Herald reported.

But three Colorado lawmakers called today for EPA Administrator Gina McCarthy to visit the state to address the agency's mistake and subsequent cleanup in a public meeting.

"Local residents, recreationalists, and business owners need to know that EPA will commit to a full cleanup of the accident and work to ensure the full environmental and economic recovery of the affected area," wrote Sens. Cory Gardner (R) and Michael Bennet (D) and Rep. Scott Tipton (R).

The lawmakers added: "Residents remain uncertain as to the dangers posed by this spill, as well as the timeline and recovery plan EPA intends to execute. Gaining an on-the-ground understanding of the situation is important to EPA's response and area residents and officials would appreciate your in-person commitment to an expeditious and thorough cleanup and recovery."

In a subsequent statement, Gardner criticized EPA's response to the spill as "outrageous, reckless and unacceptable."

"That is why I am requesting Congressional oversight hearings to examine the EPA's insufficient response and to ensure that the EPA is held to the same recovery standards as the private sector," he said. "Although the EPA has finally acknowledged the magnitude of the crisis, its ongoing lack of communication and coordination must be rectified. The local communities and industries that rely on the river for their livelihoods deserve transparency, accountability, and an explanation that is far-past due."

At an event in Washington, D.C., today -- McCarthy's first public appearance since EPA released its Clean Power Plan last week -- the administrator found herself fielding questions on the agency's role in the mine remediation disaster rather than on its signature climate change rule (see related story).

In statements and in response to questions from reporters, McCarthy said she's briefing the White House about EPA's role in contaminating the Cement Creek. She also touted what EPA has taken to address it, including setting up response and claim centers in Durango and EPA's D.C. headquarters.

"We've developed and deployed the full breadth of the agency, as well as our partners," she said. "As you all know, we have researchers and scientists at EPA, and they are working around the clock."

McCarthy promised an independent review of the accident's causes and said she expected "concerns

and lawsuits." But she stopped short of an outright admission of negligence on the part of the agency.

"I am absolutely deeply sorry that this ever happened, but I want to make sure that we react positively and in a way that's credible and that we move this forward," she added.

McCarthy told reporters following the event hosted by the think tank Resources for the Future that the affected waters would be reopened for recreation when researchers were certain it would not endanger public health.

"We are not going to take risks," she said. McCarthy also said the wastewater plume -- which is expected to reach Lake Mead, the nation's largest reservoir -- does not appear to be permanently contaminating water.

She responded to questions about an early-response delay by saying, "I think we have a solid network in place now to be able to get this job done."

## **EPA admits to misjudging pressure before spill**

*Greenwire*

Link: <http://www.eenews.net/greenwire/2015/08/11/stories/1060023276>

Published: Tuesday, August 11, 2015

U.S. EPA said it miscalculated how much water pressure was hidden behind debris plugging the Gold King Mine entrance when it accidentally released 3 million gallons of waste into a tributary of the Animas River last week.

EPA on-scene coordinator Hayes Griswold said his team was trying to stick a pipe into the top of the mine

in order to safely pump liquid out for treatment. But the effort dislodged too much debris, rupturing the mine's roof and spilling the water contaminated with lead, arsenic and other heavy metals.

"We were very careful," he said (Steve Garrison, [Farmington, N.M.] Daily Times, Aug. 10).

This week, EPA is warning farmers, towns and tribes to shut down their water intakes as the plume of contamination passes down stretches of the Animas and San Juan rivers flowing toward Lake Powell.

The agency said contaminants were flowing too fast to be an immediate health threat, and experts say the massive river system will dilute the waste before it can pose a long-term threat.

"The water appears worse aesthetically than it actually is, in terms of health," said Ron Cohen, civil and environmental engineering professor at the Colorado School of Mines.

Still, EPA has closed stretches of the river for drinking and recreation through Monday. The Navajo Nation has declared an emergency and stopped diverting water from the San Juan River.

EPA's warning has brought fear to farmers already suffering a hot, dry summer.

"By the weekend, without any rain, we'll be in trouble," said farmer D'rese Sutherland.

So far, wildlife has not been impacted by the spill, and a test batch of fingerling trout purposely exposed to the water survived over the weekend, officials said (AP/Los Angeles Times, Aug. 10). – AW

## **Pennsylvania DEP Offers Funding for Projects to Improve Local Water Quality by Reducing Stormwater Runoff**

*Reuters (press release)*

Link: <http://www.reuters.com/article/2015/08/10/pa-dep-water-quality-idUSnPn1s9ZDQ+87+PRN20150810>

HARRISBURG, Pa., Aug. 10, 2015 /PRNewswire-USNewswire/ -- The Department of Environmental Protection (DEP) has opened a grant program to control urban stormwater and improve local water quality. Municipalities, including cities, boroughs, or incorporated towns within the Chesapeake Bay Watershed are eligible to apply.

"Urban stormwater runoff has a big role in local water quality, it's so important to manage that stormwater properly to prevent pollution from reaching our waterways," said DEP Secretary John Quigley. "These grants will serve as a valuable tool to enable local governments to improve their urban stormwater management and ultimately, their water quality and that of their neighbors downstream."

The grants will fund construction of urban stormwater best management practices (BMPs) to reduce the discharge of nutrients and sediments delivered to local waterways, and ultimately, the Chesapeake Bay. Eligible projects include but are not limited to:

Raingardens/bioretention

Permeable pavement

Urban stream restoration

Urban tree planting

Green roofs

Wetlands and wet ponds

Projects must be complete within two years of grant award. Grants will be selected on a competitive basis.

The money for these grants is provided by the U.S. Environmental Protection Agency. There is \$2,300,000 available for the grant program. The maximum funding amount per applicant is \$200,000.

Projects cannot be associated with new development or for new detention basins. Projects must be within urbanized areas according to the latest Decennial Census in which National Pollutant Discharge Elimination System (NPDES) permit coverage is required for the discharge of stormwater from municipal



separate storm sewer systems, or for discharges from combined sewer overflows through combined sewer systems.

## **Final EPA Water Quality Rule Clarifies Provisions But Rejects Major Changes**

*Inside EPA*

Link: <http://insideepa.com/daily-news/final-epa-water-quality-rule-clarifies-provisions-rejects-major-changes>

EPA's newly finalized rule governing state water quality standards (WQS) appears to meet state groups' requests for greater clarity and flexibility in the rule's provisions, while rejecting calls from industry and environmentalists to either scale back or expand the policy's scope despite the groups' warnings of legal threats to force the changes.

The final rule, which EPA signed Aug. 5 ahead of its pending publication in the Federal Register, updates for the first time since 1983 obligations for states' WQS policies under the Clean Water Act (CWA). Under the water law, states craft WQS to set the water quality goals for each class of waterbodies within a state, which are then implemented through regulation and guidance, including criteria for specific pollutants. EPA is charged with reviewing and either approving or rejecting states' WQS every three years, although it rarely meets that target.

The revised rule includes requirements for federal review of state standards; variances to standards; antidegradation mandates; limits on waterbodies' designated uses; compliance schedules in permits; and the conditions under which EPA will promulgate federal standards when it determines a state's rules to be "inadequate."

The most substantial revisions from EPA's 2013 proposed version of the rule appear to be in the designated-use, variance and antidegradation sections, and generally address areas where states had asked for clarification on the meaning of new terms, or additional flexibility in crafting their policies.

Among other changes, new language in the final rule sets out procedures states can follow to determine a "highest attainable use" for a waterbody whose current designated use is unattainable; expands the range of reasons states can cite to allow degradation of a waterbody; and removes a proposed mandatory 10-

year expiration date for variances that allow more lenient state standards in some circumstances.

“EPA heard many of the state concerns and addressed them. They may not have gone as far as we'd hoped, but they did address them. In general, I think the states are really happy with the dialog we had with EPA and that this is better than the proposed rule,” says one state water source of the final rule.

But the agency declined to make the extensive substantive changes that industry and environmental advocates sought in their comments on the 2013 proposed rule.

Industry groups in particular had urged EPA to drastically scale back its proposal, such as by deleting any claim to oversee states' non-binding antidegradation policies and by removing new mandates for use attainability analyses that industry has claimed are prohibitively expensive.

Instead, the new rule claims more authority for EPA to review state water policies, adding new statements that the agency has power to approve or reject states' use of variances and compliance schedules along with the antidegradation language.

### **Industry's Concerns**

Industry signaled in comments that it would sue over the rule if EPA did not remove those claims. For instance, the Fertilizer Institute said that “EPA cannot lawfully delegate itself interpretive authority to decide how other agencies' policies for implementing WQS should be applied. The Proposed Rule acknowledges state and tribal authority and 'discretion,' but the operative provisions thereof would unlawfully interfere with their exclusive administrative authorities under the CWA.”

Despite industry opposition, EPA in the final rule also retained its proposed requirement for states seeking to renew a variance that loosens WQS for a waterbody to report on any best management practices used to reduce nonpoint sources of pollution there.

The CWA generally forbids EPA from crafting standards to control nonpoint pollution, reserving that authority for states, and in comments the American Farm Bureau Federation said the reporting clause for variances would “encroach on state primacy and exceed EPA’s CWA authority” by undermining that division.

EPA did agree with a request echoed by both state and industry to delete a provision that would have prevented regulators from removing a waterbody from the list of "high quality" waters subject to antidegradation standards solely because one or more pollutants fails to reach the goals expressed in CWA section 101(a)(2).

That section of the law establishes a target of ensuring waterbodies wherever possible allow for "protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water," typically referred to as ensuring a waterway is "fishable and swimmable."

The opponents argued that such a requirement interferes with states that select high-quality waters through waterbody-by-waterbody analysis, rather than using the more strict "parameter approach." Many industry groups argued that a rule essentially requiring the stricter approach would be illegal.

### **Environmentalists' Criticisms**

The rule also retains provisions that environmentalists sought to change or scrap, including the antidegradation policies.

Despite calling for comments on whether the final rule should require states to adopt binding rules governing their antidegradation activities -- a mandate environmentalists have long sought -- the agency did not take that step. All states are required to develop the policies, which are aimed at protecting existing water quality at "high-quality" or "Tier 2" waters, but EPA has set few standards for what they must contain, and allows them to be published in non-binding guidance rather than regulation.

The updated rule also retains a more stringent standard for when EPA makes a "determination" that a state's WQS are inadequate to achieve the water law's goals -- which under the CWA triggers a requirement for the agency to craft and implement federal standards for the state.

Under the new rule, such a determination "must be signed by the Administrator or his or her duly authorized delegate, and must include a statement that the document is a determination for purposes of section 303(c)(4)(B) of the Act."

The change comes from advocates' successful 2009 suit where they won a ruling that an EPA letter to Florida regulators seeking more protective standards for nutrients constituted a "determination" under the CWA even though the letter did not invoke the threat of federally crafted standards.

In its comments, Earthjustice said the change was “completely contrary to the purpose and intent of the Clean Water Act and Congress' intent that EPA play an oversight role to ensure the Act is implemented.”

The new rule could make it more difficult for environmentalists to prevail in their ongoing efforts to force the agency to impose tougher requirements on nutrients in Mississippi River Basin states and to strengthen Washington state's pending toxics standards.

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